



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1998

Ms. Tina Plummer
Open Records Coordinator
Texas Department of Mental Health
and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR98-2063

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117592.

The Texas Department of Mental Health and Mental Retardation (the "department") received five open records requests from the same requestor. The requested information is as follows:

1. A copy of a recent audit of the Dallas MHMR Center;
2. A preliminary report concerning 95 findings by the TDMHMR audit team in their seven week audit of Tropical Texas Center in the spring and summer of 1995, which distributed in its original form as well as a copy of the FAX cover sheet which indicates the sender was Dr. Shon;
3. Client abuse reports for Dallas County MHMR Center for the years 1991 through 1995;
4. A copy of the Board Minutes where the Board approved the "taking over" of Tropical Texas Center operations about August or 1995 presented to the Board at Odessa meeting in June or July of 1995;
5. A copy of a cover sheet and the distribution list of the "clipping service" packet which is sent to all TDMHMR facilities and centers on a quarterly or monthly basis.

You claim that the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

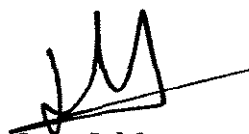
Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The department must meet both prongs of this test for information to be excepted under section 552.103(a).

After reviewing the court filed documents in re *Marion Shirah v. Arthur O. Linskey, et al*, Civil Action No. M-97-221 (U.S. Dist. Ct. for the So. Dist., McAllen Div., 1997) as well as the other submitted documents, we conclude that litigation is pending and the documents submitted under Exhibits A through G relate to the litigation. Therefore, the department may withhold the requested documents within Exhibits A through G under section 552.103. We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). Furthermore, the department may not withhold from public disclosure information that has been publicly disseminated. Moreover, the minutes of an open meeting conducted pursuant to the Open Meetings Act, chapter 551 of the Government Code, are made public by statute. Gov't Code § 551.021.

As we resolve this matter based on section 552.103, we need not address your sections 552.108 and 552.116 claims at this time. In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', with a horizontal line extending to the right.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/nc

Ref.: ID# 117592

Enclosures: Submitted documents

cc: Mr. Marion G. Shirah
1112 S. 9th Street
Edinburg, Texas 78539
(w/o enclosures)